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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,044	06/22/2001	Grover Blackwell	NHS-2	6965
7590	07/24/2006		EXAMINER	RHEE, JANE J
TIMOTHY A. CASSIDY Dority & Manning Attorneys at Law, P.A. P.O. Box 1449 Greenville, SC 29602			ART UNIT	PAPER NUMBER
1745				
DATE MAILED: 07/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/888,044	BLACKWELL ET AL.	
	Examiner	Art Unit	
	Jane Rhee	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/26/02</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/888,044

Filing Date: June 22, 2001

Appellant(s): BLACKWELL ET AL.

Dority & Manning, P.A.
For Appellant

EXAMINER'S ANSWER

MAILED
JUL 24 2006
GROUP 1700

This is in response to the appeal brief filed 2/24/2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Evidence Relied Upon*

5,848,505	Taylor	12-1998
6,014,839	Ruggles	1-2000

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable by Taylor (5848505) in view of Ruggles (6014839).

Taylor discloses a face panel made from a synthetic polymer (col. 2 line 45), the face panel including a first vertical end portion and a second vertical end portion (col. 2 line 36-37), a first rear vertical support and a second rear vertical support attached to the face panel (col. 2 line 54), the rear vertical support being spaced apart and extending along the length of the face panel (figure 2 number 16), the first rear vertical support being positioned adjacent to the first vertical end portion and the second rear vertical support being positioned adjacent to the second vertical end portion (figure 2 number 16) and at least one rear horizontal support attached to the face panel (figure 2 number 19) and rear horizontal support extending in between the pair of rear vertical supports (figure 2 number 19), and a first channel member and a second channel member each of the channel members having a u-shaped cross section, the first

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channel member being place over the first vertical end portion and the first rear vertical support and the second channel member being placed over the second vertical end portion and the second rear vertical support (figure 2). Taylor discloses that the face panel is made from an expanded foam polyvinyl chloride (col.2 lines 45-47). Taylor discloses that the first and second rear vertical supports and at least one rear horizontal support are made form an expanded foam polyvinyl chloride (col. 2 line 52). Talyor discloses that the first and second vertical supports are attached to the face panel using an adhesive (col. 2 lines 52-57). Taylor discloses that each of the vertical end portions and the rear vertical supports include indentations and wherein the channel members define raised elements that reside in the indentations (figure 2 number 17). Taylor discloses that the shutter includes at least two rear horizontal supports (col. 4 line 17-18). Taylor discloses a polymer film positioned in between the face panel and the first and the second rear vertical supports and between the face panel and at least on horizontal support (col. 3 lines 19-20). Taylor discloses that the first and second channel members are made from aluminum (col. 3 line 12). Taylor discloses routed out decorative areas (col. 2 lines 49-51). Taylor discloses that the first and second channel members extend the entire length of the face panel (figure 2 number 14). Taylor discloses that the indentations located on the vertical end portions and the rear vertical supports comprise vertical slots and extend the length of the shutter, and wherein the raised elements defined by the channel members also extend the length of the shutter (figure 2 number 17).

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Taylor fail to disclose that the channel members being made from a metal.

Ruggles teaches that the channel members maybe constructed from of any suitable material or combination of materials, including but not limited to wood, metal, plastics, ceramics, and combinations thereof (col. 6 lines 10-14), therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Taylor with the channel members being made from a metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. In re Leshin, 125 USPQ 416.

Taylor fail to disclose that the face panel is coated with a lacquer coating. Taylor teaches repainting of the shutters periodically during the life of the shutter to prolong the lifespan of the shutter (col. 5 lines 21).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide the face panel with a coating of lacquer to prolong the lifespan of the shutter as taught by Taylor. (col. 5 line 21).

Furthermore, applicant amended the independent claims 1, 11, and 17 to include the limitation that the first channel member being placed over and enclosing the first vertical end portion and the first rear vertical support and the second channel member being placed over and enclosing the second vertical end portion and the second rear vertical support, the first and second channel members forming exterior vertical edges of the shutter. Taylor discloses in figure 2 that the first channel member (left side number 11) is placed over and encloses the first vertical end portion (left side number

17) and the first rear vertical support (left side number 16) and the second channel member (right side number 11), is placed over and encloses the second vertical end portion (right side number 17) and the second rear vertical support (right side number 16), the first and second channel members forming exterior vertical edges of the shutter (right and left side number 11).

(10) Response to Argument

Appellant argues that Taylor fails to disclose or suggest channel members made from a metal that form the exterior edges of a shutter.

In response to appellant's argument that Taylor fails to disclose the first and second metal channel members that form exterior vertical edges of a shutter, the applicant merely claims that the first channel member and the second channel member is made of metal, therefore, Talyor discloses that the first and second channel members are made from aluminum (col. 3 line 12) because applicant did not claim that the first and second channel members are entirely made of metal. Part of Taylor's first and second channel members is made of aluminum and even if the aluminum parts of the first and second channel member are considered as inserts in the first and second channel members, the first and second channel members as a whole comprises the aluminum insert therefore the first and second channel members is made of metal. Furthermore, prior art Ruggles teaches that the frame of the can be made of metal among other practical materials and since the first and second channel members frame applicant's shutter, it would have been obvious to provide Taylor with the first and

second channel members to be made of metal since it has bee held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416.

Appellant argues that Taylor teaches away from a shutter that includes exposed areas made from a metal and teaches away from including metal channel members that form the exterior edges of the shutter.

In response to appellant's argument that Taylor teaches away from a shutter that includes exposed areas made from metal and teaches away from including metal channels members that form the exterior edges of the shutter, appellant broadly claimed that the first and second channel member each having a U-shaped cross section and being made of metal, therefore, since the aluminum rods are considered part of the U-shaped first and second channel, the examiner broadly considers the first and second channel member each having a U-shaped cross section and being made of metal. As to Taylor teaching away from a shutter that includes exposed areas made from metal and teaching away from including metal channels members that form exterior edges of the shutter, appellant did not claim that the shutter includes "exposed areas made from metal" nor did the appellant claim "metal channels members that form exterior edges of the shutter". Appellant merely claimed that the first and second channel member each having a U-shaped cross section and being made of metal. Again, as discussed above, appellant did not claim that the entire first and second channel members are being made of metal, part of Taylor's first and second channel members is made of aluminum and even if the aluminum parts of the first and second channel member are considered

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as inserts in the first and second channel members, the first and second channel members as a whole comprises the aluminum insert therefore the first and second channel members is made of metal.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Taylor and Ruggles both teach a shutter assembly that includes a pair of stiles that are parallel to one another and extend vertically and a top rail and a parallel bottom rail that extends between the stiles wherein the shutter assembly is made from plastic material. Ruggles further teaches that the stiles, top rail and bottom rail which constitute the frame of the shutter assembly may be made of any suitable material or combination of materials including wood, metal, plastics ceramics and combinations thereof (col. 6 lines 10-14). Therefore, since Ruggles teaches that the frame of the can be made of metal among other practical materials and since the first and second channel members frame applicant's shutter, it would have been obvious to provide Taylor with the first and second channel members to be made of metal since it has bee held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416.

However, even without the combination of the secondary reference taught by Ruggles to teach that the first and second channel members are being made from metal, Taylor still discloses that the first and second channel members are made from metal such as aluminum (col. 3 line 12) because appellant did not claim that the first and second channel members are entirely made of metal. Furthermore, even if appellant argues that the first and second channel members that are made from metal are U-shaped and that Taylor does not disclose the first and second channel members being U-shaped with the combination of the aluminum rods, the first and second channel members of Taylor's shutters are U-shaped even with the addition of the aluminum rods because the vertical side members has two arms which extend the length of the vertical side members which are made to grip the complementary stepped projection shown in figure 5. Therefore, Taylor discloses a first channel member and a second channel member each of the channel members having a u-shaped cross section and being made of metal (col. 3 lines 7-16).

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,



Jane Rhee
July 10, 2006



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SUPERVISORY PATENT EXAMINER

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(Rev. 5/92) Information Disclosure Statement List By Applicant Under 37 CFR Section 1.98(a)(1) (Use several sheets if necessary)		Attorney Docket Number NHS-2	Serial Number 09/888,044
		Applicant Grover Blackwell, et al.	
		Filing Date June 22, 2001	Group 1772
		Confirmation No. 6965	

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- (3) Both reasons (1) and (2) apply
- (4) No legible complete copy is possessed, in custody of controlled, or readily available

U.S. PATENT DOCUMENTS							
EXAMINER INITIALS	PATENTEE NAME	PATENT NUMBER				ISSUE DATE	COPY NOTE
JR	Barry Woodrow Taylor	5	8	4	8	5	0
						5	12/15/98

FOREIGN PATENT DOCUMENTS					
EXAMINER INITIALS	COUNTRY	DOCUMENT NUMBER	PUBLICATION DATE	TRANSLATION	COPY NOTE
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*"NO" means that no copy of an English language translation is within the possession, custody, or control of, or is readily available to any individual designated in Rule 56(c).

EXAMINER INITIALS	OTHER DOCUMENTS Specify author (if any), Title, Pertinent Pages, Date & Place of Publication			COPY NOTE
EXAMINER /Jane Rhee/	DATE CONSIDERED 07/10/2006			

Examiner: initial if citation considered, whether or not citation is in conformance with MPEP 609;
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this form with the next communication to applicant.

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